IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2852 OF 2003

Suresh Krushnaji Deshpande & Ors. ...Petitioners.
Vs.
The Municipal Corporation of the City
of Pune & Ors. ...Respondents.

....

Mr. G. H. Keluskar for the Petitioner.
Mr.R. G. Ketkar for Respondent Nos.1 and 2.
Mr. V.P. Vanarse, AGP for Respondent No.3.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

March 20, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.) :

The Petitioners claim to be owners of Plot No.332 admeasuring 1985 sq.mtrs. bearing City Survey No. 949 situated at Model Colony, Shivaji Nagar, Pune. According to the Petitioners, in pursuance of an appeal made by the then Chief Minister, following the floods which affected the City of Pune in 1961, the Petitioners handed over the said plot to the First Respondent for the purposes of setting up transit accommodation for the flood affected persons. According to the Petitioners, the plot was subsequently occupied by slum dwellers. Upon the enforcement of the provisions of the Urban Land (Ceiling and

Regulation) Act, 1976, the First Petitioner filed a return under Section 6(1) inter alia in respect of the aforesaid land. It has been stated that on 19th April 1990, the First Respondent passed a resolution to allot plot NO.82 bearing Survey No.121-122, admeasuring 420.11 sq.mtrs. at Kothrud, Pune to the Petitioners. According to the Petitioners, on 31st July 1992, they handed over possession of the plot admeasuring 1985 sq.mtrs. to the First Respondent and the First Respondent handed over possession of Plot No. 82/2 admeasuring 420.11 sq.mtrs. to the Petitioners. It has been stated that on 21st January 1999, the Competent Authority under the ULC Act declared that the Petitioners were entitled to hold land to the extent of 1000 sq.mtrs. each. The grievance of the Petitioners is that they have been put in possession of a plot admeasuring approximately 420 sq.mtrs. and that the remaining area of 1563.89 sq.mtrs. representing the difference between the land which was taken over and allotted at Kothrud should also be allotted to them. In the circumstances, the Petitioners seek a Writ of Mandamus for the allotment of an alternative plot admeasuring 1563.89 sq.mtrs.

An affidavit in reply has been filed on behalf of the First

Respondent in which it is denied that the Petitioners handed over Plot No.332 admeasuring 1985 sq.mtrs. (City Survey No.949 at Model Colony, Shivaji Nagar, Pune). On the contrary, it has been stated that the Municipal Corporation had informed the State Government that persons affected by the 1961 floods had not been rehabilitated on the said plot. The case of the Municipal Corporation is that the plot had already been encroached upon by slum dwellers and it was declared by the Competent Authority as a slum on 16th August 1973 under the Slums Act. On 19th April 1990, the General Body of the Municipal Corporation resolved to allot a vacant plot admeasuring 420.11 sq.mtrs. out of plot No.82 of Survey Nos.121/122 on the Petitioners' handing over an area admeasuring 632.57 sq.mtrs. which had been declared surplus under the provisions of the ULC Act. The Additional Collector and Competent Authority addressed a letter on 22nd July 1992 sanctioning the exchange. Thereafter, the First Petitioner on behalf of the Petitioners handed over land admeasuring 632.57 sq.mtrs. together with hutments situated thereon to the Circle Officer, Pune City on 31st July 1992. The Circle Officer in turn, handed over the area to the Junior Engineer, Land and Estate Office of the First Respondent. According to the First Respondent,

vacant possession of an area admeasuring 420.11 sq.mtrs. from Plot No.82 out of Survey No.121/122 was handed over to the Petitioners and a possession receipt was executed on 31st July 1992. In response to the representation made by the Petitioners to the State Government, the First Respondent had submitted a reply on 1st June 2000 to the Housing and Special Assistance Department, a copy of which is annexed to the affidavit in reply. A further letter dated 19th October 2000 was also issued clarifying the position. The Municipal Corporation has urged that its letter written as far back as in October 2000 would belie the claim of the Petitioners that the plot came to be occupied by slum dwellers after it had been handed over to the First Respondent.

In our view, the petition raises purely disputed questions of fact which cannot be resolved in the exercise of the jurisdiction of this Court under Article 226 of the Constitution. The Municipal Corporation has in its affidavit in reply specifically denied the contention of the Petitioners that the entire plot admeasuring 1985 sq.mtrs. was handed over by the Petitioners. The Municipal Corporation has denied the submission of the Petitioners that the plot was encroached by slum dwellers after possession was

handed over to the Corporation. The specific case of the Municipal Corporation on affidavit is that the Petitioners had handed over an area admeasuring 632.57 sq.mtrs. which was already occupied by slum dwellers to the First Respondent against which the Petitioners were granted vacant possession of an area admeasuring 420.11 sq.mtrs. from Survey No.121/122 at Kothrud. The factual dispute raised by the Petitioners cannot, in these circumstances, be evaluated in the exercise of our writ jurisdiction since this raises disputed issues on which evidence would have to be adduced at the trial of a suit. We, therefore, decline to exercise our extraordinary jurisdiction under Article 226 of the Constitution. The petition is dismissed leaving it upon to the Petitioners to take recourse to the other remedies as are available in law.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.